

**UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF GEORGIA**  
**SAVANNAH DIVISION**

FILED  
U.S. DISTRICT COURT  
SAVANNAH, GA.

2007 MAR 29 PM 5:03

CLERK  
S.D. OF GA.



JAMES REED,

Petitioner,

v.

DON GAIER, Warden,

Respondent.

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Case No. CV407-005

**REPORT AND RECOMMENDATION**

Respondent has filed a motion to dismiss petitioner's § 2254 petition for habeas corpus relief. Doc. 6. Petitioner has not responded to respondent's motion.

In the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. 104-132, Stat. 1214, Congress amended the federal habeas statute to require that a second or successive petition be certified by a panel of the appropriate court of appeals:

Before a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.

28 U.S.C. § 2244(b)(3)(A).

The Seventh Circuit held that this provision “is an allocation of subject-matter jurisdiction to the court of appeals. A district court *must* dismiss a second or successive petition, without awaiting any response from the government, unless the court of appeals has given approval for its filing.” Nunez v. United States, 96 F.3d 990, 991 (7th Cir. 1996) (emphasis in original). The Eleventh Circuit has reached the same result. Hill v. How, 112 F.3d 1088, 1089 (11th Cir. 1997); In re Medina, 109 F.3d 1556 (11th Cir. 1997).

The record indicates that petitioner previously filed a § 2254 petition in this Court on May 23, 2001, challenging his February 26, 1998 Chatham County conviction, the same conviction petitioner challenges in the instant § 2254 petition. See Reed v. Murrell, No. CV401-122 (S.D. Ga. 2001). The district judge dismissed the petition on October 16, 2001.<sup>1</sup> CV401-122, doc. 14. Because the instant petition is successive and petitioner has not demonstrated that the Eleventh Circuit has authorized the filing of this petition, this Court is not at liberty to

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<sup>1</sup>The record further indicates that petitioner filed a § 2254 petition in this Court on May 11, 2004, challenging his February 26, 1998 Chatham County conviction, and it was dismissed as successive. See Reed v. Roberts, No. CV404-079 (S.D. Ga. 2004).

consider it. Accordingly, the Court recommends that the petition be  
DISMISSED as successive.

**SO REPORTED AND RECOMMENDED** this 29<sup>th</sup> day of  
March, 2007.

  
UNITED STATES MAGISTRATE JUDGE  
SOUTHERN DISTRICT OF GEORGIA